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**JUN 21 2007**

**OFFICE OF PETITIONS**

In re Application of :  
Canali, Candello, Fuster, :  
Banda, Walsh, Bergantino, : DECISION REFUSING STATUS  
Schaffner, and Hasslinger : UNDER 37 CFR 1.47(a)  
Application No. 09/784,330 :  
Filed: 16 February, 2001 :  
Atty Docket No. 025780-00001 :

This is a decision on the petition under 37 CFR 1.47(a), filed on 1 October, 2001.

The Office apologizes for the delay in responding to the present petition and regrets any inconvenience to petitioners.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

**FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 16 February, 2001, without an executed oath or declaration. Accordingly, on 30 May, 2001, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts of Nonprovisional Application, requiring the statutory basic filing fee, additional claim fee(s), an executed oath or declaration and a surcharge for its late filing. A substitute specification and substitute drawings were also required. A two (2) month period for reply was set.

In response, on 1 October, 2001, a petition under 37 CFR 1.47(a), the required statutory basic filing fee, additional claim fees(s), and a substitute specification and substitute drawings were filed. The late-filing surcharge and authorization to charge all required fees to counsel's deposit account were also filed, along with a declaration naming Luigi J.F. Canali, Stephen P. Candello, Felipe J. Fuster, Frank D. Banda, Brendan B. Walsh, Gail M. Bergantino, Jorn M. Schaffner, and Michael R. Hasslinger as joint inventors was also filed. The declaration was signed by all inventors except joint inventors Fuster, Banda, and Schaffner.

It is noted that subsequently, on 16 October, 2001, a declaration signed by joint inventor Schaffner was filed. As such, the petition will be considered under 37 CFR 1.47(a) only with regards to joint inventors Fuster and Banda.

Petitioners assert, via the statement of registered patent attorney Dale S. Lazar, that a copy of the application was sent to the non-signing inventors. The copy sent to joint inventor Banda was returned as undeliverable and was re-sent to his business address. Neither inventor signed the declaration, and both non-signing inventors stated in e-mail messages to inventor Brendan B. Walsh that they would not sign the declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (2).

In regards to item (2), the declaration is not acceptable because only one of the signing inventors signed on behalf of the non-signing inventors. The declaration is acceptable if all of the signing inventors signed in their respective signature blocks and the signature block of the non-signing inventors is left blank or all the signing inventors sign a statement saying that they are

signing on behalf of the non-signing inventors. The declaration is not acceptable if there are two or more signing inventors and only one of the signing inventors signed on behalf of the non-signing inventors.

The declaration is not acceptable because it was signed on behalf of the non-signing inventors only by joint inventor Walsh.

A new declaration signed by all of the signing inventors on behalf of themselves and the non-signing inventors should be filed with a renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX:           (571) 273-8300  
                  Attn: Office of Petitions

By hand:          Customer Service Window  
                  Mail Stop Petition  
                  Randolph Building  
                  401 Dulany Street  
                  Alexandria, VA 22314

A two (2) month extension of time is required to make the petition filed on 1 October, 2001<sup>1</sup> timely filed. The petition fee and extension of time fee will be charged to counsel's deposit account, as authorized on the issue fee transmittal form filed on 29 January, 2007.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

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<sup>1</sup> Since 30 September, 2001 fell on a Sunday, the petition filed on 1 October, 2001, is timely filed with a two (2) month extension of time.